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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 ALONZO BACKUS, an individual,
12 Plaintiff,

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14 vs.
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17 C/E AUTO SALES, a business entity,
18 form unknown; CHARLES EDWARD
19 MCVAY, an individual; CREDIT
20 ACCEPTANCE CORPORATION, a
21 Michigan corporation; WESTERN
22 SURETY COMPANY, a South Dakota
corporation; and DOES 1 through 10,
inclusive,
Defendants.

Case No. 11-CV-170 BEN (BGS)

ORDER:

**(1) GRANTING JOINT
MOTION TO REMAND TO
CALIFORNIA SUPERIOR
COURT FOR LACK OF
FEDERAL SUBJECT-MATTER
JURISDICTION; AND**

**(2) DENYING MOTION TO
ENFORCE ARBITRATION
AGREEMENT AS MOOT IN
LIGHT OF REMAND**

[Doc. ## 5 & 6]

23 All parties now jointly move the Court to remand this action to California superior
24 court. As their consensus opinion, the parties assert that the removal of January 26, 2011, was
25 "improvident" because "the amount in controversy requirement for the particular Federal
26 enactment at issue in this case may not be satisfied here." (Joint Mot. Remand to State Court
27 [Doc. # 6] at 2:12 [referring to the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301-12.].)
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The Court has reviewed the joint motion and the pleadings in this case and finds that

1 good cause exists to remand the action back to San Diego Superior Court.

2 As a matter of law, the Court notes that it is presumed to lack jurisdiction unless a
3 removing party can prove otherwise. *See Kokkenen v. Guardian Life Ins. Co.*, 511 U.S. 375,
4 377 (1994) ("Federal courts are courts of limited jurisdiction It is to be presumed that a
5 cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests
6 upon the party asserting jurisdiction.") (internal citations omitted); *Stock West, Inc. v.*
7 *Confederated Tribes*, 873 F.2d 1221, 1225 (9th Cir. 1989). Consequently, "[f]ederal
8 jurisdiction must be rejected if there is any doubt as to the right of removal in the first
9 instance." *Gaus v. Miles*, 980 F.2d 564, 566 (9th Cir. 1982). Here, the parties unanimously
10 doubt the propriety of the initial removal from San Diego Superior Court.

11 Accordingly, the joint motion of Plaintiff ALONZO BACKUS and Defendants
12 CREDIT ACCEPTANCE CORPORATION, C/E AUTO SALES, CHARLES E. MCVAY,
13 and WESTERN SURETY COMPANY is **GRANTED**. The Court hereby remands this action
14 to the San Diego Superior Court. In light of this remand, Defendant Credit Acceptance
15 Corporation's pending Motion to Enforce Contractual Arbitration [Doc. # 5] is **DENIED** as
16 moot.

17 **IT IS SO ORDERED.**

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19 Dated: February 18, 2011

20 
21 THE HONORABLE ROGER T. BENITEZ
22 UNITED STATES DISTRICT JUDGE
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